

**ASSEMBLY BILL**

**No. 1572**

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**Introduced by Committee on Elections and Redistricting (Fong (Chair), Adams (Vice Chair), Coto, Mendoza, Saldana, and Swanson)**

March 17, 2009

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An act to amend Section 1363.03 of the Civil Code, to amend Sections 354.5, 13107.3, 13307, and 14225 of the Elections Code, and to amend Section 22970.20 of the Water Code, relating to voting.

LEGISLATIVE COUNSEL'S DIGEST

AB 1572, as introduced, Committee on Elections and Redistricting. Voting.

(1) Under existing law, a candidate may have a ballot designation appear on the ballot immediately under his or her name, as prescribed. If the candidate chooses a ballot designation, he or she must submit to the county elections official a ballot designation worksheet with his or her declaration of candidacy.

This bill would make nonsubstantive changes to these provisions.

(2) Existing law permits a candidate for local nonpartisan elective office to prepare a candidate's statement. The elections official is required to send to the voters, together with the sample ballot, a voter's pamphlet which contains the written statement of each candidate that is prepared pursuant to these provisions. The local agency may estimate the total cost of producing and processing the candidate's statement, and may require each candidate filing a statement to pay in advance to the local agency his or her pro rata share of that estimate. Existing law states that the elections official is not bound by that estimate and may, on a pro rata basis, bill the candidate for additional actual expense or

refund any excess paid depending on the final actual cost. In the event of an underpayment, the elections official may require the candidate to pay the balance of the cost incurred, and in the event of an overpayment, the elections official shall prorate the excess amount among the candidates and refund the excess amount paid within 30 days of the election.

The bill would instead shift the authority to bill the candidate for additional actual expenses and the obligation to refund any overpayment to the candidate from the elections official to the local agency that produced the estimated cost.

The bill also would delete an obsolete provision relating to the filing of a candidate's statement by a candidate for judicial office.

(3) Existing law provides procedures pertaining to "absentee ballots."

The bill would change statutory references to "absentee ballots" to references to "vote by mail ballots."

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1363.03 of the Civil Code is amended  
2 to read:

3 1363.03. (a) An association shall adopt rules, in accordance  
4 with the procedures prescribed by Article 4 (commencing with  
5 Section 1357.100) of Chapter 2, that do all of the following:

6 (1) Ensure that if any candidate or member advocating a point  
7 of view is provided access to association media, newsletters, or  
8 Internet Web sites during a campaign, for purposes that are  
9 reasonably related to that election, equal access shall be provided  
10 to all candidates and members advocating a point of view,  
11 including those not endorsed by the board, for purposes that are  
12 reasonably related to the election. The association shall not edit  
13 or redact any content from these communications, but may include  
14 a statement specifying that the candidate or member, and not the  
15 association, is responsible for that content.

16 (2) Ensure access to the common area meeting space, if any  
17 exists, during a campaign, at no cost, to all candidates, including  
18 those who are not incumbents, and to all members advocating a  
19 point of view, including those not endorsed by the board, for  
20 purposes reasonably related to the election.

1 (3) Specify the qualifications for candidates for the board of  
2 directors and any other elected position, and procedures for the  
3 nomination of candidates, consistent with the governing documents.  
4 A nomination or election procedure shall not be deemed reasonable  
5 if it disallows any member of the association from nominating  
6 himself or herself for election to the board of directors.

7 (4) Specify the qualifications for voting, the voting power of  
8 each membership, the authenticity, validity, and effect of proxies,  
9 and the voting period for elections, including the times at which  
10 polls will open and close, consistent with the governing documents.

11 (5) Specify a method of selecting one or three independent third  
12 parties as inspector, or inspectors, of election utilizing one of the  
13 following methods:

14 (A) Appointment of the inspector or inspectors by the board.

15 (B) Election of the inspector or inspectors by the members of  
16 the association.

17 (C) Any other method for selecting the inspector or inspectors.

18 (6) Allow the inspector, or inspectors, to appoint and oversee  
19 additional persons to verify signatures and to count and tabulate  
20 votes as the inspector or inspectors deem appropriate, provided  
21 that the persons are independent third parties.

22 (b) Notwithstanding any other law or provision of the governing  
23 documents, elections regarding assessments legally requiring a  
24 vote, election and removal of members of the association board  
25 of directors, amendments to the governing documents, or the grant  
26 of exclusive use of common area property pursuant to Section  
27 1363.07 shall be held by secret ballot in accordance with the  
28 procedures set forth in this section. A quorum shall be required  
29 only if so stated in the governing documents of the association or  
30 other provisions of law. If a quorum is required by the governing  
31 documents, each ballot received by the inspector of elections shall  
32 be treated as a member present at a meeting for purposes of  
33 establishing a quorum. An association shall allow for cumulative  
34 voting using the secret ballot procedures provided in this section,  
35 if cumulative voting is provided for in the governing documents.

36 (c) (1) The association shall select an independent third party  
37 or parties as an inspector of election. The number of inspectors of  
38 election shall be one or three.

39 (2) For the purposes of this section, an independent third party  
40 includes, but is not limited to, a volunteer poll worker with the

1 county registrar of voters, a licensee of the California Board of  
2 Accountancy, or a notary public. An independent third party may  
3 be a member of the association, but may not be a member of the  
4 board of directors or a candidate for the board of directors or related  
5 to a member of the board of directors or a candidate for the board  
6 of directors. An independent third party may not be a person,  
7 business entity, or subdivision of a business entity who is currently  
8 employed or under contract to the association for any compensable  
9 services unless expressly authorized by rules of the association  
10 adopted pursuant to paragraph (5) of subdivision (a).

11 (3) The inspector or inspectors of election shall do all of the  
12 following:

13 (A) Determine the number of memberships entitled to vote and  
14 the voting power of each.

15 (B) Determine the authenticity, validity, and effect of proxies,  
16 if any.

17 (C) Receive ballots.

18 (D) Hear and determine all challenges and questions in any way  
19 arising out of or in connection with the right to vote.

20 (E) Count and tabulate all votes.

21 (F) Determine when the polls shall close, consistent with the  
22 governing documents.

23 (G) Determine the tabulated results of the election.

24 (H) Perform any acts as may be proper to conduct the election  
25 with fairness to all members in accordance with this section, the  
26 Corporations Code, and all applicable rules of the association  
27 regarding the conduct of the election that are not in conflict with  
28 this section.

29 (4) An inspector of election shall perform his or her duties  
30 impartially, in good faith, to the best of his or her ability, and as  
31 expeditiously as is practical. If there are three inspectors of election,  
32 the decision or act of a majority shall be effective in all respects  
33 as the decision or act of all. Any report made by the inspector or  
34 inspectors of election is prima facie evidence of the facts stated in  
35 the report.

36 (d) (1) For purposes of this section, the following definitions  
37 shall apply:

38 (A) "Proxy" means a written authorization signed by a member  
39 or the authorized representative of the member that gives another  
40 member or members the power to vote on behalf of that member.

1 (B) "Signed" means the placing of the member's name on the  
2 proxy (whether by manual signature, typewriting, telegraphic  
3 transmission, or otherwise) by the member or authorized  
4 representative of the member.

5 (2) Proxies shall not be construed or used in lieu of a ballot. An  
6 association may use proxies if permitted or required by the bylaws  
7 of the association and if those proxies meet the requirements of  
8 this article, other laws, and the association's governing documents,  
9 but the association shall not be required to prepare or distribute  
10 proxies pursuant to this section.

11 (3) Any instruction given in a proxy issued for an election that  
12 directs the manner in which the proxyholder is to cast the vote  
13 shall be set forth on a separate page of the proxy that can be  
14 detached and given to the proxyholder to retain. The proxyholder  
15 shall cast the member's vote by secret ballot. The proxy may be  
16 revoked by the member prior to the receipt of the ballot by the  
17 inspector of elections as described in Section 7613 of the  
18 Corporations Code.

19 (e) Ballots and two preaddressed envelopes with instructions  
20 on how to return ballots shall be mailed by first-class mail or  
21 delivered by the association to every member not less than 30 days  
22 prior to the deadline for voting. In order to preserve confidentiality,  
23 a voter may not be identified by name, address, or lot, parcel, or  
24 unit number on the ballot. The association shall use as a model  
25 those procedures used by California counties for ensuring  
26 confidentiality of ~~voter~~ *absentee vote by mail* ballots, including all  
27 of the following:

28 (1) The ballot itself is not signed by the voter, but is inserted  
29 into an envelope that is sealed. This envelope is inserted into a  
30 second envelope that is sealed. In the upper left hand corner of the  
31 second envelope, the voter shall sign his or her name, indicate his  
32 or her name, and indicate the address or separate interest identifier  
33 that entitles him or her to vote.

34 (2) The second envelope is addressed to the inspector or  
35 inspectors of election, who will be tallying the votes. The envelope  
36 may be mailed or delivered by hand to a location specified by the  
37 inspector or inspectors of election. The member may request a  
38 receipt for delivery.

39 (f) All votes shall be counted and tabulated by the inspector or  
40 inspectors of election or his or her designee in public at a properly

1 noticed open meeting of the board of directors or members. Any  
2 candidate or other member of the association may witness the  
3 counting and tabulation of the votes. No person, including a  
4 member of the association or an employee of the management  
5 company, shall open or otherwise review any ballot prior to the  
6 time and place at which the ballots are counted and tabulated. The  
7 inspector of election, or his or her designee, may verify the  
8 member's information and signature on the outer envelope prior  
9 to the meeting at which ballots are tabulated. Once a secret ballot  
10 is received by the inspector of elections, it shall be irrevocable.

11 (g) The tabulated results of the election shall be promptly  
12 reported to the board of directors of the association and shall be  
13 recorded in the minutes of the next meeting of the board of  
14 directors and shall be available for review by members of the  
15 association. Within 15 days of the election, the board shall  
16 publicize the tabulated results of the election in a communication  
17 directed to all members.

18 (h) The sealed ballots at all times shall be in the custody of the  
19 inspector or inspectors of election or at a location designated by  
20 the inspector or inspectors until after the tabulation of the vote,  
21 and until the time allowed by Section 7527 of the Corporations  
22 Code for challenging the election has expired, at which time  
23 custody shall be transferred to the association. If there is a recount  
24 or other challenge to the election process, the inspector or  
25 inspectors of election shall, upon written request, make the ballots  
26 available for inspection and review by an association member or  
27 his or her authorized representative. Any recount shall be conducted  
28 in a manner that preserves the confidentiality of the vote.

29 (i) After the transfer of the ballots to the association, the ballots  
30 shall be stored by the association in a secure place for no less than  
31 one year after the date of the election.

32 (j) Notwithstanding any other provision of law, the rules adopted  
33 pursuant to this section may provide for the nomination of  
34 candidates from the floor of membership meetings or nomination  
35 by any other manner. Those rules may permit write-in candidates  
36 for ballots.

37 (k) Except for the meeting to count the votes required in  
38 subdivision (f), an election may be conducted entirely by mail  
39 unless otherwise specified in the governing documents.

1 (l) The provisions of this section apply to both incorporated and  
2 unincorporated associations, notwithstanding any contrary  
3 provision of the governing documents.

4 (m) The procedures set forth in this section shall apply to votes  
5 cast directly by the membership, but do not apply to votes cast by  
6 delegates or other elected representatives.

7 (n) In the event of a conflict between this section and the  
8 provisions of the Nonprofit Mutual Benefit Corporation Law (Part  
9 3 (commencing with Section 7110) of Division 2 of Title 1 of the  
10 Corporations Code) relating to elections, the provisions of this  
11 section shall prevail.

12 (o) The amendments made to this section by the act adding this  
13 subdivision shall become operative on July 1, 2006.

14 SEC. 2. Section 354.5 of the Elections Code is amended to  
15 read:

16 354.5. (a) "Signature" includes either of the following:

17 (1) A person's mark if the name of the person affixing the mark  
18 is written near the mark by a witness over the age of 18 years  
19 designated by the person and the designee subscribes his or her  
20 own name as a witness thereto. For purposes of this paragraph, a  
21 signature stamp may be used as a mark, provided that the  
22 authorized user complies with the provisions of this paragraph.

23 (2) An impression made by the use of a signature stamp pursuant  
24 to the requirements specified in subdivision (c).

25 (b) A mark attested as provided in paragraph (1) of subdivision  
26 (a), or an impression made by a signature stamp as provided in  
27 paragraph (2) of subdivision (a), may serve as a signature for any  
28 purpose specified in this code, including a sworn statement.

29 (c) An authorized user of a signature stamp may use it to affix  
30 a signature to a document or writing any time that a signature is  
31 required by this code, provided that all of the following conditions,  
32 as applicable, are met:

33 (1) A signature stamp used to obtain a ballot or ~~absentee vote~~  
34 *by mail* ballot in any local, state, or federal election shall be used  
35 only by the authorized user of that signature stamp.

36 (2) A signature stamp shall be affixed by the authorized user in  
37 the presence of the Secretary of State, his or her designee, the local  
38 elections official, or his or her designee, to obtain a ballot, in any  
39 local, state, or federal election unless the authorized user of the  
40 signature stamp votes by ~~absentee vote~~ *by mail* ballot. If the owner

1 of a signature stamp votes by ~~absentee~~ *vote by mail* ballot, he or  
2 she shall affix the signature stamp on the ~~absentee ballot~~  
3 *identification envelope* in accordance with the requirements of  
4 Section 3019.

5 (d) A signature affixed with a signature stamp by an authorized  
6 user in accordance with the requirements of this section shall be  
7 treated in the same manner as a signature made in writing.

8 (e) A registered voter or any person who is eligible to vote, who  
9 qualifies as an authorized user pursuant to paragraph (1) of  
10 subdivision (g), may use a signature stamp only after he or she  
11 first submits his or her affidavit of registration or a new affidavit  
12 of registration, whichever is applicable, in the presence of a county  
13 elections official, using the signature stamp to sign the affidavit.

14 (f) The Secretary of State shall report to the Legislature not later  
15 than January 1, 2009, regarding the use of signature stamps during  
16 the 2008 elections.

17 (g) The following definitions apply for purposes of this section:

18 (1) "Authorized user" means either of the following:

19 (A) A person with a disability who, by reason of that disability,  
20 is unable to write and who owns a signature stamp.

21 (B) A person using the signature stamp on behalf of the owner  
22 of the stamp with the owner's express consent and in the presence  
23 of the owner.

24 (2) "Disability" means a medical condition, mental disability,  
25 or physical disability, as those terms are defined in subdivisions  
26 (h), (i), and (k) of Section 12926 of the Government Code.

27 (3) "Signature stamp" means a stamp that contains the  
28 impression of any of the following:

29 (A) The actual signature of a person with a disability.

30 (B) A mark or symbol that is adopted by the person with the  
31 disability.

32 (C) A signature of the name of a person with a disability that is  
33 made by another person and is adopted by the person with the  
34 disability.

35 SEC. 3. Section 13107.3 of the Elections Code is amended to  
36 read:

37 13107.3. (a) ~~Each~~ A candidate who submits a ballot designation  
38 pursuant to subdivision (a) of Section 13107 shall file, ~~in addition~~  
39 ~~to the nomination documents filed pursuant to Section 8020,~~ a  
40 ballot designation worksheet that supports the use of that ballot



1 designation by the candidate, in a format prescribed by the  
2 Secretary of State.

3 (b) The ballot designation worksheet shall be filed with the  
4 elections official at the same time that the candidate files his or  
5 her declaration of candidacy.

6 (c) In the event that a candidate fails to file a ballot designation  
7 worksheet in accordance with subdivision (a), no designation shall  
8 appear under the candidate's name on the ballot.

9 SEC. 4. Section 13307 of the Elections Code is amended to  
10 read:

11 13307. (a) (1) Each candidate for nonpartisan elective office  
12 in any local agency, including any city, county, city and county,  
13 or district, may prepare a candidate's statement on an appropriate  
14 form provided by the elections official. The statement may include  
15 the name, ~~age~~ age, and occupation of the candidate and a brief  
16 description, of no more than 200 words, of the candidate's  
17 education and qualifications expressed by the candidate himself  
18 or herself. However, the governing body of the local agency may  
19 authorize an increase in the limitations on words for the statement  
20 from 200 to 400 words. The statement shall not include the party  
21 affiliation of the candidate, nor membership or activity in partisan  
22 political organizations.

23 (2) The statement authorized by this subdivision shall be filed  
24 in the office of the elections official when the candidate's  
25 nomination papers are returned for filing, if it is for a primary  
26 election, or for an election for offices for which there is no primary.  
27 The statement shall be filed in the office of the elections official  
28 no later than the 88th day before the election, if it is for an election  
29 for which nomination papers are not required to be filed. If a runoff  
30 election or general election occurs within 88 days of the primary  
31 or first election, the statement shall be filed with the elections  
32 official by the third day following the governing body's declaration  
33 of the results from the primary or first election.

34 (3) Except as provided in Section 13309, the statement may be  
35 withdrawn, but not changed, during the period for filing nomination  
36 papers and until 5 p.m. of the next working day after the close of  
37 the nomination period.

38 ~~(4) Notwithstanding paragraph (2) of this subdivision, a~~  
39 ~~candidate for a judicial office shall have until 5 p.m. on the 83rd~~  
40 ~~day before the election to file a candidate statement as authorized~~

1 ~~by this section. This paragraph shall remain in effect only until~~  
2 ~~January 1, 2007, and as of that date is repealed, unless a later~~  
3 ~~enacted statute, that is enacted before January 1, 2007, deletes or~~  
4 ~~extends that date.~~

5 (b) The elections official shall send to each voter, together with  
6 the sample ballot, a voter's pamphlet which contains the written  
7 statements of each candidate that is prepared pursuant to this  
8 section. The statement of each candidate shall be printed in type  
9 of uniform size and darkness, and with uniform spacing. The  
10 elections official shall provide a Spanish translation to those  
11 candidates who wish to have one, and shall select a person to  
12 provide that translation from the list of approved Spanish language  
13 translators and interpreters of the superior court of the county or  
14 from an institution accredited by the Western Association of  
15 Schools and Colleges.

16 (c) The local agency may estimate the total cost of printing,  
17 handling, translating, and mailing the candidate's statements filed  
18 pursuant to this section, including costs incurred as a result of  
19 complying with the federal Voting Rights Act of 1965, as amended.  
20 The local agency may require each candidate filing a statement to  
21 pay in advance to the local agency his or her estimated pro rata  
22 share as a condition of having his or her statement included in the  
23 voter's pamphlet. In the event the estimated payment is required,  
24 the receipt for the payment shall include a written notice that the  
25 estimate is just an approximation of the actual cost that varies from  
26 one election to another election and may be significantly more or  
27 less than the estimate, depending on the actual number of  
28 candidates filing statements. Accordingly, ~~the elections official~~  
29 *local agency* is not bound by the estimate and may, on a pro rata  
30 basis, bill the candidate for additional actual expense or refund  
31 any excess paid depending on the final actual cost. In the event of  
32 underpayment, ~~the elections official~~ *local agency* may require the  
33 candidate to pay the balance of the cost incurred. In the event of  
34 overpayment, *the local agency which or the elections official who*  
35 *collected the estimated cost* shall prorate the excess amount among  
36 the candidates and refund the excess amount paid within 30 days  
37 of the election.

38 (d) Nothing in this section shall be deemed to make any  
39 statement or the authors thereof free or exempt from any civil or  
40 criminal action or penalty because of any false, slanderous, or

1 libelous statements offered for printing or contained in the voter's  
2 pamphlet.

3 (e) Before the nominating period opens, the local agency for  
4 that election shall determine whether a charge shall be levied  
5 against that candidate for the candidate's statement sent to each  
6 voter. This decision shall not be revoked or modified after the  
7 seventh day prior to the opening of the nominating period. A  
8 written statement of the regulations with respect to charges for  
9 handling, packaging, and mailing shall be provided to each  
10 candidate or his or her representative at the time he or she picks  
11 up the nomination papers.

12 (f) For purposes of this section and Section 13310, the board of  
13 supervisors shall be deemed the governing body of judicial  
14 elections.

15 SEC. 5. Section 14225 of the Elections Code is amended to  
16 read:

17 14225. Members of the precinct board shall not deposit in the  
18 ballot container any ballot from which the slip containing the  
19 number of the ballot has not been removed by a member of the  
20 precinct board and handed to the voter. This section does not apply  
21 to ~~voting a vote by absent voter~~ mail ballot.

22 SEC. 6. Section 22970.20 of the Water Code is amended to  
23 read:

24 22970.20. Not less than seven days before any runoff election,  
25 any voter entitled to vote by ~~absent voter~~ vote by mail ballot as  
26 provided in Section ~~23531~~ 10530 of the Elections Code may file  
27 with the county elections official, either in person or by mail, his  
28 or her written application for ~~an absent voter's~~ a vote by mail ballot.  
29 ~~Absent~~ Vote by mail voting shall be conducted in accordance with  
30 the provisions of Section ~~23531~~ 10530 of the Elections Code.